

## Nuclear Regulatory Commission

## § 26.413

(g) Licensees and other entities shall provide for an MRO review of positive, adulterated, substituted, and invalid confirmatory drug and validity test results to determine whether the donor has violated the FFD policy, before reporting the results to the individual designated by the licensee or other entity to perform the suitability and fitness evaluations required under § 26.419.

[73 FR 17176, Mar. 31, 2008, as amended at 75 FR 73941, Nov. 30, 2010]

### § 26.406 Fitness monitoring.

(a) The requirements in this section apply only if a licensee or other entity does not elect to subject the individuals specified in § 26.4(f) to random testing for drugs and alcohol under § 26.405(b).

(b) Licensees and other entities shall implement a fitness monitoring program to deter substance abuse and detect indications of possible use, sale, or possession of illegal drugs; use or possession of alcohol while constructing or directing the construction of safety- or security-related SSCs; or impairment from any cause that if left unattended may result in a risk to public health and safety or the common defense and security.

(c) Licensees and other entities shall establish procedures that monitors shall follow in response to the indications and actions specified in paragraph (b) of this section and train the monitors to implement the program.

(d) Licensees and other entities shall ensure that the fitness of individuals specified in § 26.4(f) is monitored effectively while the individuals are constructing or directing the construction of safety- and security-related SSCs, commensurate with the potential risk to public health and safety and the common defense and security imposed by the construction activity. To achieve this objective, licensees and other entities shall consider the number and placement of monitors required, the necessary ratio of monitors to individuals specified in § 26.4(f), and the frequency with which the individuals specified in § 26.4(f) shall be monitored while constructing or directing

the construction of each safety- or security-related SSC.

[73 FR 17176, Mar. 31, 2008, as amended at 75 FR 73941, Nov. 30, 2010]

### § 26.407 Behavioral observation.

While the individuals specified in § 26.4(f) are constructing or directing the construction of safety- or security-related SSCs, licensees and other entities shall ensure that these individuals are subject to behavioral observation, except if the licensee or other entity has implemented a fitness monitoring program under § 26.406.

[75 FR 73941, Nov. 30, 2010]

### § 26.409 Sanctions.

Licensees and other entities who implement an FFD program under this subpart shall establish sanctions for FFD policy violations that, at a minimum, prohibit the individuals specified in § 26.4(f) from being assigned to construct or direct the construction of safety- or security-related SSCs unless or until the licensee or other entity determines that the individual's condition or behavior does not pose a potential risk to public health and safety or the common defense and security.

[75 FR 73941, Nov. 30, 2010]

### § 26.411 Protection of information.

(a) Licensees and other entities who collect personal information about an individual for the purpose of complying with this subpart shall establish and maintain a system of files and procedures to protect the personal information. FFD programs must maintain and use such records with the highest regard for individual privacy.

(b) Licensees and other entities shall obtain a signed consent that authorizes the disclosure of the personal information collected and maintained under this subpart before disclosing the personal information, except for disclosures to the individuals and entities specified in § 26.37(b)(1) through (b)(6), (b)(8), and persons deciding matters under review in § 26.413.

### § 26.413 Review process.

Licensees and other entities who implement an FFD program under this subpart shall establish and implement

## **§ 26.415**

procedures for the review of a determination that an individual in § 26.4(f) has violated the FFD policy. The procedure must provide for an objective and impartial review of the facts related to the determination that the individual has violated the FFD policy.

### **§ 26.415 Audits.**

(a) Licensees and other entities who implement an FFD program under this subpart shall ensure that audits are performed to assure the continuing effectiveness of the FFD program, including FFD program elements that are provided by C/Vs, and the FFD programs of C/Vs that are accepted by the licensee or other entity.

(b) Each licensee and other entity shall ensure that these programs are audited at a frequency that assures their continuing effectiveness and that corrective actions are taken to resolve any problems identified. Licensees and entities may conduct joint audits, or accept audits of C/Vs conducted by others, so long as the audit addresses the relevant C/Vs' services.

(c) Licensees and other entities need not audit HHS-certified laboratories or the specimen collection and alcohol testing services that meet the requirements of 49 CFR Part 40, "Procedures for Department of Transportation Workplace Drug and Alcohol Testing Programs" (65 FR 41944; August 9, 2001), on which licensees and other entities may rely to meet the drug and alcohol testing requirements of this subpart.

### **§ 26.417 Recordkeeping and reporting.**

(a) Licensees and other entities who implement FFD programs under this subpart shall ensure that records pertaining to the administration of the program, which may be stored and archived electronically, are maintained so that they are available for NRC inspection purposes and for any legal proceedings resulting from the administration of the program.

(b) Licensees and other entities shall make the following reports:

(1) Reports to the NRC Operations Center by telephone within 24 hours after the licensee or other entity discovers any intentional act that casts doubt on the integrity of the FFD program and any programmatic failure,

## **10 CFR Ch. I (1–14 Edition)**

degradation, or discovered vulnerability of the FFD program that may permit undetected drug or alcohol use or abuse by individuals who are subject to this subpart. These events must be reported under this subpart, rather than under the provisions of 10 CFR 73.71; and

(2) Annual program performance reports for the FFD program.

### **§ 26.419 Suitability and fitness evaluations.**

Licensees and other entities who implement FFD programs under this subpart shall develop, implement, and maintain procedures for evaluating whether to assign individuals to construct safety- and security-related SSCs. These procedures must provide reasonable assurance that the individuals are fit to safely and competently perform their duties, and are trustworthy and reliable, as demonstrated by the avoidance of substance abuse.

## **Subparts L–M [Reserved]**

## **Subpart N—Recordkeeping and Reporting Requirements**

### **§ 26.709 Applicability.**

The requirements of this subpart apply to the FFD programs of licensees and other entities specified in § 26.3, except for FFD programs that are implemented under subpart K of this part.

### **§ 26.711 General provisions.**

(a) Each licensee and other entity shall maintain records and submit certain reports to the NRC. Records that are required by the regulations in this part must be retained for the period specified by the appropriate regulation. If a retention period is not otherwise specified, these records must be retained until the Commission terminates the facility's license, certificate, or other regulatory approval.

(b) All records may be stored and archived electronically, provided that the method used to create the electronic records meets the following criteria:

(1) Provides an accurate representation of the original records;